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FEDERAL ELECTION COMMISSION
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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

MUR: 6218
Date Complaint Filed: October 14, 2009
Date of Notification: October 21, 2009
Date of Last Response: December 10, 2009
Date Activated: December 18, 2009

Expiration of Statute
of Limitations: May 1, 2014

COMPLAINANT:

Gary Levine

RESPONDENTS:

Ball4NY and Maria DiSalvo, in her official capacity as
treasurer
Greg Ball

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 441a(a)(1)(a)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d
2 U.S.C. § 441i(e)
11 C.F.R. § 110.11
11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint alleges that Greg Ball and Ball4NY and Maria DiSalvo, in her official capacity as treasurer, ("Committee") Greg Ball's campaign committee for his 2010 race for the U.S. House of Representatives from New York's 19th Congressional District, violated the Federal Election Campaign Act of 1971, as amended ("the Act") with respect to five different

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1 factual scenarios.¹ First, the complaint alleges that Ball and the Committee solicited "soft
2 money" contributions in violation of 2 U.S.C. §§ 441b(a) and 441i(e) in connection with a silent
3 auction. In response, the Committee states that it neither solicited nor accepted corporate
4 contributions for the silent auction. The solicitation, however, encouraged outreach to
5 "businesses," a term broad enough to be interpreted as including corporations, and some original
6 sources of donations may have been corporations. Given that a campaign volunteer generated
7 the solicitation without Committee approval, and that the items that possible corporations may
8 have donated were of relatively low value, we recommend that the Commission exercise its
9 prosecutorial discretion and dismiss the allegations that Greg Ball and the Committee violated
10 2 U.S.C. § 441b(a) or 2 U.S.C. § 441i(e) by soliciting corporate contributions in connection with
11 the silent auction, and send a cautionary notification. *See Heckler v. Cheney*, 470 U.S. 821, 831
12 (1985).

13 Second, the complaint alleges that Ball and the Committee accepted corporate
14 contributions and solicited excessive contributions in violation of sections 441a(f), 441b(a) and
15 441i(e) of the Act in connection with a campaign event known as the Rockin' Rib Fest and
16 Battle of the Bands ("Rockin' Rib Fest"). According to the complaint, the event's publicity
17 stated that the event would be sponsored by two corporations, and sought contributions in
18 excess of the federal contribution limit. The Committee admits to mistakenly releasing its
19 publicity in connection with the Rockin' Rib Fest in anticipation of receiving sponsorships from
20 two organizations, neither of which it asserts ultimately contributed to the event. It also avers
21 through its treasurer that the Committee accepted no corporate or excessive contributions for the
22 event. It appears, however, that the Committee accepted a contribution of \$500 from one of the

¹ Mr. Ball, who was at the time a New York State Assembly member, withdrew from the congressional race on November 21, 2009 to run for the New York State Senate.

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1 organizations listed as a sponsor, a corporation, within a few weeks of the Rockin' Rib Fest.
2 There also may have been pre-event publicity that solicited excessive contributions. Because the
3 event's publicity mistakenly included the names of the two anticipated sponsors because the
4 Committee apparently had not yet obtained their agreement or consent to sponsor the event, the
5 one corporate contribution received is of relatively low value, the event does not appear to have
6 raised significant funds, and the candidate withdrew from the race four months after the event
7 and well before the election, we recommend that the Commission exercise its prosecutorial
8 discretion and dismiss the allegations that Greg Ball and the Committee violated 2 U.S.C.
9 §§ 441a(f), 441b(a) and 441i(e) by soliciting corporate or excessive contributions in connection
10 with the Rockin' Rib Fest, and send a cautionary notification. *See Heckler v. Cheney*, 470 U.S.
11 821, 931 (1985).

12 Third, the complaint alleges that Ball and the Committee also solicited excessive funds in
13 connection with a campaign event featuring Ari Fleischer, in violation of sections 441a(f) and
14 441i(e). While some pre-event publicity for the Ari Fleischer event may have solicited excessive
15 contributions, the Committee's treasurer averred that no excessive contributions were received in
16 connection with the event, and we have no information to the contrary. Therefore, we
17 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations
18 that Greg Ball and the Committee violated 2 U.S.C. §§ 441a(f) and 441i(e) by soliciting
19 excessive contributions in connection with the Ari Fleischer event, and send a cautionary
20 notification.

21 Fourth, the complaint alleges that Ball and the Committee accepted transfers of assets
22 from Greg Ball's state campaign committee or Ball's State Assembly Office, in the form of
23 photographs and videos used by the Committee, in violation of 2 U.S.C. § 441i(e) and 11 C.F.R.

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1 § 110.3(d). The Committee maintains that it did not accept photographs or videos from Ball's
2 state campaign committee. According to the Committee, either Greg Ball or the Committee
3 owns the photographs, some of which the Committee paid to license from the New York State
4 Assembly, and the videos are freely available on YouTube. We have no information to the
5 contrary. Accordingly, we recommend that the Commission find no reason to believe that Greg
6 Ball and the Committee violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d) in connection with
7 photographs or videos used in Ball's federal campaign.

8 Finally, the complaint alleges that Ball and the Committee had automated telephone calls
9 sent on the Committee's behalf without saying who paid for the calls or whether the Committee
10 or Ball authorized them, in violation of 2 U.S.C. § 441d. The Committee states that the
11 telephone calls contained a disclaimer saying the Committee paid for the calls, but that the
12 disclaimer represented vendor error, because an individual, not the Committee, paid for the calls.
13 We recommend that the Commission find no reason to believe that Greg Ball and the Committee
14 violated 2 U.S.C. § 441d(a) in connection with the automated calls, since it appears that the calls
15 required no disclaimer. We also recommend that the Commission close the file.

16 **III. FACTUAL AND LEGAL ANALYSIS**

17 **A. Alleged Solicitations of Corporate Contributions for a Silent Auction**

18 The Committee held a golf outing that included a silent auction on June 5, 2009. Before
19 the event, Jacqueline Ambrosino, representing herself as affiliated with Greg Ball's Exploratory
20 Committee, sent an email to a distribution list soliciting donations for the silent auction that
21 encouraged the recipients of the email to "reach out to your network and try to get donations

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1 from both businesses and people."² See Exhibit A to the complaint (email excerpt) and Exhibit 4
2 to the Committee's Response (complete email). According to the complaint, the email expressly
3 asked for corporate contributions.

4 It appears that the complaint is alleging that the email's suggested outreach by
5 individuals to "businesses" for donations to the silent auction is equivalent to a solicitation for
6 prohibited corporate contributions, and constitutes a violation of section 441i(e) of the Act,
7 which provides that a candidate, individual holding federal office, agent of a candidate or an
8 individual holding federal office shall not solicit, receive, direct, transfer or spend funds in
9 connection with an election for Federal office unless the funds are subject to the limitations,
10 prohibitions and reporting requirements of the Act. See 2 U.S.C. § 441i(e). Corporations are
11 prohibited from making a contribution in connection with a federal election, and it is unlawful
12 for any candidate, political committee, or any other person knowingly to accept or receive a
13 prohibited contribution in connection with a federal election. 2 U.S.C. § 441b.

14 In response, the Committee maintains that Ms. Ambrosino, who sent the email, was a
15 campaign volunteer, used her personal email account to send the email, at her own expense, and
16 the Committee did not review, approve, or authorize the email before she distributed it. We have
17 no information to the contrary. The Committee did not send a corrective email because it
18 determined that nothing in Ms. Ambrosino's email was improper. According to the Committee,
19 it is well aware of the source restrictions in the Act as illustrated by its donor reply forms

² In its response, the Committee stated that the communication about the event was e-mailed on May 1, 2009 and the Committee filed its Statement of Organization on May 6, 2009. Thus, while the e-mail referred to the exploratory committee as the sponsor of the event, the Committee actually sponsored the event. According to the Committee, Ms. Ambrosino sent the email to the Committee's general email distribution list of individual supporters and donors.

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1 attached as Exhibits 7 and 8 to its response, and disagrees that the email expressly solicited
2 prohibited corporate contributions. It points out that under the Act, several forms of
3 "businesses," including partnerships, certain LLCs, and sole proprietorships, are permitted to
4 make federal contributions. See 11 C.F.R. §§ 110.1(e) (partnership contributions) and 110.1(g)
5 (LLC contributions), and Advisory Opinion 1981-03 (Robinson) (partnership and sole
6 proprietorship contributions). Moreover, the Committee provides an affidavit from its treasurer
7 averring that no in-kind contributions or monetary contributions were made by prohibited
8 sources in connection with the silent auction. See Affidavit of Maria DiSalvo attached to the
9 Response. The treasurer attaches, as Exhibit 1-C to her affidavit, a spreadsheet listing all items
10 contributed to the silent auction, the contributor, the value of the in-kind contribution, the
11 purchaser of the items, and references to the disclosure of the contributions in the Committee's
12 Schedules A and B. The Committee acknowledged that in preparing its response it discovered
13 errors on its disclosure reports, mostly involving not itemizing multiple contributions of repeat
14 donors whose aggregate contributions exceeded \$200, and states that it plans to file amended
15 reports.

16 While the word "businesses" is not limited to corporations and can include partnerships
17 and other entities, we believe that the public could reasonably interpret that word to include
18 corporations. According to the spreadsheet attached to the treasurer's affidavit as Exhibit 1-C
19 and the Committee's disclosure reports, the Committee in all cases treated the individuals
20 providing items to be auctioned, such as gift certificates, as the contributors, rather than the
21 businesses that may have donated the item for free through the individual named as the
22 contributor. While it is possible that some or all of the individuals bought the items, and then
23 donated them, making the individuals the actual contributors, the email encouraged individuals

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1 to approach businesses for free donations by advising that "[w]hen working with a business, you
2 can emphasize the foot traffic that will be generated by having their name featured at our event
3 and in a brochure to be handed out to everyone at the event." See Exhibit A to the Complaint.
4 Therefore, it is possible that some of the items provided for the silent auction might have come
5 from corporations ineligible to make federal contributions.³ The contributed items were valued
6 in a range from \$50 to \$950 per item.

7 Given that a campaign volunteer without Committee authorization or approval generated
8 the solicitation and that the items that possible corporations may have provided for free to
9 individuals expressly for the auction were of relatively low value and apparently accounted for
10 10% or less of the total value of \$11,000 of all silent auction items, we do not believe it is an
11 appropriate use of the Commission's resources to pursue the allegations in connection with the
12 silent auction. See *Heckler v. Cheney*, 470 U.S. 821, 831 (1985). Accordingly, we recommend
13 that the Commission exercise its prosecutorial discretion and dismiss the allegations that Greg
14 Ball and Ball4NY and Maria DiSalvo, in her official capacity as treasurer, violated 2 U.S.C. §§
15 441b(a) and 441i(e) in connection with the email soliciting donations for the silent auction, and
16 send a cautionary notification. In the notification to the Respondents, we also plan to inform the
17 Committee of its obligation to amend its disclosure reports to itemize contributions to the silent
18 auction from contributors whose aggregate contributions to the Committee exceeded \$200.

19
20

³ For example, among the donated items are gift certificates for restaurants, clubs, and retail and professional services, some specifically named such as Tom & Jerry's Restaurants and Beach Burn Tanning businesses that apparently have associated corporations, and others described generically, such as "restaurant gift certificate" or "restaurant gift basket." See Exhibit 1-C to the treasurer's affidavit.

B. Rockin' Rib Fest: Alleged Acceptance of Corporate Sponsorships and Soliciting Excessive Contributions

Based on a flyer and accompanying information, the complaint alleges that on July 25, 2009, the Committee held a Rockin' Rib Fest that was sponsored by the New York Rifle and Pistol Association and the National Rifle Association, which complainant believes are corporations. The complaint also alleges that the Committee's publicity for the event sought additional sponsorships in the amount of \$2,900, an amount in excess of the applicable federal contribution limit. See 2 U.S.C. §§ 441a(f), 441b and 441i(e) and Exhibit B to the complaint.

In response, the Committee states that it anticipated receiving support from the political action committees of both the New York Rifle and Pistol Association and the National Rifle Association for the Rockin' Rib Fest event, because both organizations had supported Mr. Ball in the past as a New York State Assemblyman, and Mr. Ball personally solicited contributions from the National Rifle Association's PAC for the event. The Committee acknowledges that Mr. Ball was mistaken in his belief that the New York Rifle and Pistol Association has a federal political action committee.

According to the Committee and supported by its treasurer's affidavit, the Committee accepted no excessive contributions and no corporate entity made a contribution or provided any "sponsorship" for the event. The Committee acknowledges that the final version of the pamphlet produced to publicize the event, attached as Exhibit 9 to its response, contains an incorrect "sponsorship" statement, but the Committee claims the pamphlet was released too late to be revised and notes that the pamphlet specifically states the source prohibitions of the Act, including the ban on corporate contributions. Moreover, according to the Committee, it is not prohibited to solicit \$2,900, but only to solicit in excess of \$2,400 per person, per election, and that if it had received a contribution in excess of \$2,400, the contributor would have had to sign a

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1 "Contribution Form," attached as Exhibit 5 to the response, designating the excess for the
2 general election.

3 We recommend that the Commission exercise its prosecutorial discretion and dismiss the
4 allegations pertaining to the Rockin' Rib Fest solicitations and contributions, and send a
5 cautionary notification. The Committee's publicity for the event did not make clear that
6 contributions were limited to \$2,400 per person, per election on the publicity itself; a separate
7 contribution form would not appear to remedy this omission. The Committee states it did not
8 receive corporate contributions or excessive contributions in connection with the Rockin' Rib
9 Fest. We have no information to the contrary, except a \$500 contribution disclosed on the
10 Committee's July 2009 Quarterly Report from New York State Rifle and Pistol Association,
11 which does not have a federal political committee. We do not know for certain whether the
12 contribution was made in connection with the Rockin' Rib Fest held four weeks later or whether
13 Mr. Ball or other Committee representatives specifically solicited it.

14 With respect to the publicity stating that the National Rifle Association and the New
15 York Rifle and Pistol Association were sponsoring the Rockin' Rib Fest, the Committee states
16 that a "similar case of misidentification" arose in MUR 5859 (Lois Murphy for Congress
17 Committee), in which the Commission found no reason to believe the respondents violated
18 section 441b of the Act where the Committee mistakenly identified ACORN in a press release
19 endorsing Murphy, when it was actually a related state PAC, Pennsylvania ACORN, that made
20 the endorsement and sponsored a subsequent rally. If the Committee in this matter mistakenly
21 identified the National Rifle Association, a section 501(4)(c) corporation, instead of its PAC,
22 there might be a close analogy. However, this is not a situation where a mistake in identifying

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1 the correct names of sponsors occurred, but rather a mistake in listing the two corporations as
2 sponsors at all.

3 A contribution includes anything of value made by any person for the purpose of influencing a
4 Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value" encompasses any goods or
5 services provided without charge or at less the usual and normal charge unless otherwise
6 specifically exempted. See 11 C.F.R. § 100.52(d)(1). Because the Act prohibits corporations
7 from contributing anything of value to committees, or using their resources to facilitate
8 contributions to committees, see 11 C.F.R. § 114.2(f)(1), the lending of a corporation's name to a
9 committee for use on a fundraising solicitation would constitute an impermissible corporate
10 contribution.⁴

11 In this matter, it appears that the Committee released its publicity before receiving any
12 consent or assurance from the National Rifle Association or the New York Rifle and Pistol
13 Association that they intended to "sponsor" or contribute their names to the event and without an
14 agreement to list them as sponsors. From a review of the Committee's disclosure reports, our
15 best estimate is that the Committee raised \$7,670 from the Rockin' Rib Fest, which is a small
16 percentage of the total amount of \$418,000 raised by the Committee before Greg Ball withdrew
17 from the congressional race long before the election. See footnote 1, *supra*.

18 Because (1) the Committee included the names of two corporations in its publicity
19 by mistake and apparently without the agreement or consent of the corporations, (2) the

⁴ See, e.g., Advisory Opinion 2007-10 (Reyes) (the Commission concluded that a committee holding a fundraising golf tournament could not recognize its contributors by posting signs including the name, trademark, or service mark of their employers); Factual and Legal Analysis in MUR 6110 (Obama Victory Fund) (dismissing allegations of corporate sponsorship of concert where the value of the names and logos of the particular businesses constituted an in kind contribution but was likely unsubstantial and the event was modest in size); see also MUR 5578 (Wetterling for Congress) (Commission found no reason to believe that that a committee received a corporate contribution when it allegedly used a corporation's trademark in a campaign ad where the committee paid for all advertising expenses, the advertisement did not suggest a corporate endorsement, and the alleged corporate logo used in the campaign ad at issue was not the alleged contributing corporation's logo).

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1 one corporate contribution the Committee received was of relatively low value, (3) the
2 Rockin' Rib Fest event does not appear to have raised significant funds and (4) the candidate
3 withdrew from the race four months after the event and well before the election, we recommend
4 that the Commission exercise its prosecutorial discretion and dismiss the allegations that Greg
5 Ball and Ball4NY and Maria DiSalvo, in her official capacity as treasurer, violated 2 U.S.C. §§
6 441a(f), 441b(a) and 441i(e) in connection with the Rockin' Rib Fest, and send a cautionary
7 notification. *See Heckler v. Cheney*, 470 U.S. 821, 831 (1985). In our cautionary notification to
8 Respondents, we will also inform the Committee of its obligation to refund the \$500 corporate
9 contribution it received from the New York State Rifle and Pistol Association.

10 **C. Ari Fleischer Event: Alleged Solicitation of Excessive Contributions**

11 The complaint alleges that a Committee solicitation to a campaign event featuring Ari
12 Fleischer sought contributions in excess of the contribution limits. *See Exhibit C* to the
13 complaint. In response, the Committee maintains that beside the options in the solicitation to
14 contribute in excess of \$2,400 is the language "(call for details)," which was intended to allow
15 contributors to contribute to both the primary and general elections; if they called, they would
16 have been advised of the contribution limits, and the need to designate amounts in excess of
17 \$2,400 to the general election and to sign the "Contribution Form" containing the designation
18 information. The treasurer's affidavit avers that no potential contributor contacted the
19 Committee for details pertaining to contributions in excess of \$2,400, and the Committee
20 received no contributions in excess of \$2,400 in connection with this event.

21 The Committee's publicity for the event did not make clear that contributions were
22 limited to \$2,400 per person, per election on the publicity itself and a notation "call for details" is
23 insufficient to convey this information. However, based on the Committee's treasurer affidavit

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1 stating that no excessive contributions were received in connection with the event, and with no
2 information to the contrary, we recommend that the Commission exercise its prosecutorial
3 discretion and dismiss the allegations that Greg Ball and Ball4NY and Maria DiSalvo, in her
4 official capacity as treasurer, violated 2 U.S.C. § 441a(f) and 2 U.S.C. § 441i(e) in connection
5 with the Ari Fleischer event, and send a cautionary notification. *See Heckler v. Cheney*, 470 U.S.
6 821, 831 (1985); *see also* Factual and Legal Analysis in MUR 5918 (Romney for President)
7 (dismissing allegation of violation of 2 U.S.C. § 441i(e) based upon the likely low dollar amount
8 involved).

9 **D. Alleged Transfers of Assets from Greg Ball's Nonfederal Campaign or Office**
10 **to his Federal Campaign**
11

12 As discussed above, Section 441i(e)(1)(A) of the Act prohibits a federal candidate, a
13 candidate's agent, and entities established, financed, maintained or controlled by, or acting on
14 behalf of, a candidate from soliciting, receiving, directing, transferring or spending funds in
15 connection with a Federal election unless the funds are subject to the Act's limitations,
16 prohibitions and reporting requirements. In addition, Commission regulations specifically
17 prohibit transfers of funds or assets from a candidate's account for a nonfederal election to his or
18 her principal campaign committee for a federal election. 11 C.F.R. § 110.3(d).

19 Attaching pages from the Committee's website as examples, the complaint alleges that
20 Greg Ball and the Committee used videos, photographs and other unspecified assets from Ball's
21 nonfederal campaign or his New York Assembly office without payment to his nonfederal
22 campaign or the State of New York. *See* Complaint, Exhibit D. In response, the Committee
23 states that with respect to the assets specified in the complaint, the 32 thumbnail screen captures
24 on its website that link to video footage are freely available on YouTube, and were never assets
25 of Greg Ball's nonfederal campaign or his New York Assembly office. We have reviewed the

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1 videos, which show Assemblyman Ball debating issues in the state legislature, speaking at
2 various events, and engaging in state campaign debates. It appears that these videos were filmed
3 by news media or by unknown individuals. There is no information that Mr. Ball's state
4 committee or New York Assembly office ever owned these videos, which are available on
5 YouTube.

6 The Committee also states that there is a photo "tab" on the website linking to a photo
7 hosting service known as Picassa Web Album, which contains a "Greg Ball Public Gallery" of
8 photographs. The photographs show Mr. Ball attending various events in his state legislative
9 district, in New York City, or elsewhere in New York. According to the Committee, these
10 photographs are the personal property of Greg Ball or the federal committee, or were licensed
11 from the New York State Assembly. The Committee's treasurer averred that the Committee
12 purchased the right to use 246 photographs from the New York State Assembly on October 6,
13 2009 for \$615, and provided supporting documentation at Exhibits 1-D and 1-E to her affidavit.
14 We have no information to the contrary. While pointing out that the complaint does not identify
15 any other assets allegedly transferred from Ball's nonfederal campaign or office, the Committee
16 states that it did not improperly transfer any assets.

17 Based on the above, we recommend that the Commission find no reason to believe that
18 Greg Ball and Ball4NY and Maria DiSalvo, in her official capacity as treasurer, violated
19 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d).

20 **E. Alleged Lack of Disclaimer on Automatic Calls**

21 The complaint alleges that on or about June 9, 2009, an automated call featuring Greg
22 Ball was distributed to voters in the 19th Congressional District that contained no disclaimer
23 stating who paid for the call or whether it had been authorized by the campaign. In support, the

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1 complaint attached a CD that contained no disclaimer. The complaint also states that the
2 Committee's July 2009 Quarterly Report discloses an in-kind contribution made on June 29,
3 2009 by Brian Callaghan in the form of "Automated Calls," suggesting that this individual may
4 have paid for the calls that allegedly had no disclaimer.

5 In response, the Committee provided, as Exhibit 13, a copy of the recording that was
6 distributed to the public and a transcript of the call. The recording, in fact, contains the
7 following disclaimer "This call was paid for by Ball4NY." While Greg Ball delivers the call's
8 message, the disclaimer is spoken by another male. We have no information as to why the copy
9 of the recording attached to the complaint does not contain this disclaimer.

10 According to the Committee, the disclaimer is wrong because it did not pay for the
11 automated calls. Instead, Brian Callaghan, as reported by the Committee, paid \$526.84 for the
12 production and distribution of the calls with his personal credit card. At Mr. Ball's suggestion,
13 Callaghan employed a vendor for the calls that had a long relationship with Ball. The response
14 states its belief that the vendor made an incorrect assumption when it recorded the disclaimer
15 because of Greg Ball's participation in the recording. Once the recording was distributed,
16 according to the Committee, it was too late to correct the disclaimer.

17 When a person other than a political committee makes a public communication consisting of
18 more than 500 identical phone calls within a 30-day period, the Act and the Commission's regulations
19 require a disclaimer stating who paid for the call and whether it was authorized by a candidate or his or
20 her authorized committee in the following circumstances: (1) if the communication expressly
21 advocates the election or defeat of a clearly identified candidate; (2) if the communication contains a
22 solicitation; or (3) if the communication is an electioneering communication. 2 U.S.C. § 441d(a) and
23 11 C.F.R. § 110.11(a). None of these circumstances is present here.

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1 The text of the automated calls, preceding the disclaimer, states:

2 Hello, this is State Assemblyman Greg Ball. On July 6 at 7 pm join the Tea Party
3 Patriots at Dutchess Stadium for the Hudson Valley's second Tea Party. We can't
4 afford to lose more jobs and we must unite as taxpayers and voters to fight these
5 ongoing tax increases, the out of control spending and the bailouts and corporate
6 welfare. For more information, go to FishkillTeaParty.com, that's
7 FishkillTeaParty.com. Albany is a disaster, and in Washington, our own
8 Congressman was one of the deciding votes for cap and trade, a national energy
9 tax that will cost your family \$1600. Have you had enough? King George
10 wanted 10%; we revolted. Now's the time. Our government is asking for nearly
11 50% and families are struggling just to get by. Join me, the Tea Party Patriots on
12 July 6 at 7 pm at Dutchess Stadium to say "Enough is enough." Come early and if
13 you can be kind to the environment by carpooling. Let's fight and let's do it
14 together.

15
16 First, we conclude that the recorded message does not contain express advocacy within
17 the meaning of 11 C.F.R. § 100.22.⁵ The message appears to be an invitation to a "Tea Party"
18 event sponsored by a group called the Fishkill Tea Party, not Greg Ball's campaign. A
19 newspaper announcement for the event describes it as a non-partisan event and a follow-up to the
20 April 15th Tax Day Tea Party, focusing on government spending and tax increases, including
21 bills pending in Congress, with a businessman, students and two New York State Assemblymen,
22 including Greg Ball, as speakers. *See Independence Day Tea Party*, Hudson Valley Press,
23 July 5, 2009. While the message appears to criticize Ball's opponent (John Hall) for supporting
24 a bill in the House that raised taxes, the message could reasonably be interpreted as a call for
25 listeners to join the fight against tax increases. Second, the text does not solicit for contributions.

⁵ Under the Commission's regulations, a communication contains express advocacy when it uses phrases such as "vote for the President," "reelect your Congressman," "support the Democratic nominee," or "Smith for Congress" or "individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers or advertisements" saying "Carter '76" or "Reagan/Bush." 11 C.F.R. § 100.22(a). The second part of the regulation encompasses a communication that, when taken as a whole or with limited reference to external events, "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because" it contains an "electoral portion," that is "unmistakable, unambiguous, and suggestive of only one meaning," and "reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 C.F.R. § 100.22(b).

1 Third, it was not run during an electioneering communications time-period. Consequently, it
2 does not appear that the federal election laws required the calls to carry any disclaimer at all.

3 We recommend that the Committee find no reason to believe that Greg Ball and Ball4NY
4 and Maria DiSalvo, in her official capacity as treasurer, violated 2 U.S.C. § 441d(a) because a
5 disclaimer was not required, the error was apparently made by the vendor, the Committee did not
6 pay for the telephone calls, the candidate did not record the disclaimer statement, and the
7 Committee properly disclosed the in-kind contribution. Finally, we recommend that the
8 Commission close the file.

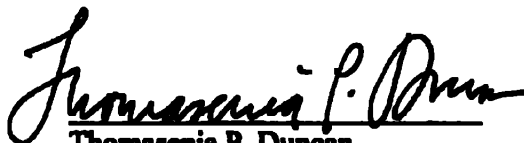
9 **III. RECOMMENDATIONS**

- 10 1. Dismiss the allegation that Ball4NY and Maria DiSalvo, in her official capacity as
11 treasurer, violated 2 U.S.C. §§ 441b(a) and 441i(e) in connection with the silent
12 auction and send a cautionary notification.
13
- 14 2. Dismiss the allegation that Greg Ball violated 2 U.S.C. §§ 441b(a) and 441i(e) in
15 connection with the silent auction and send a cautionary notification.
16
- 17 3. Dismiss the allegation that Ball4NY and Maria DiSalvo, in her official capacity as
18 treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a) and 441i(e) in connection with the
19 Rockin' Rib Fest and send a cautionary notification.
20
- 21 4. Dismiss the allegation that Greg Ball violated 2 U.S.C. §§ 441a(f), 441b(a) and
22 441i(e) in connection with the Rockin' Rib Fest and send a cautionary notification.
23
- 24 5. Dismiss the allegation that Ball4NY and Maria DiSalvo, in her official capacity as
25 treasurer Greg Ball violated 2 U.S.C. §§ 441a(f) and 441i(e) in connection with the
26 Ari Fleischer event and send a cautionary notification.
27
- 28 6. Dismiss the allegation that Greg Ball violated 2 U.S.C. §§ 441a(f) and 441i(e) in
29 connection with the Ari Fleischer event and send a cautionary notification.
30
- 31 7. Find no reason to believe that Ball4NY and Maria DiSalvo, in her official capacity
32 as treasurer, violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d) in connection with
33 videos and photos used in the federal campaign.
34
- 35 8. Find no reason to believe that Greg Ball violated 2 U.S.C. § 441i(e) and 11 C.F.R.
36 § 110.3(d) in connection with videos and photos used in the federal campaign.
37

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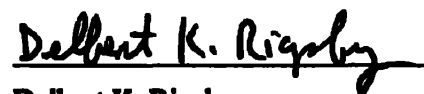
9. Find no reason to believe that Ball4NY and Maria DiSalvo violated 2 U.S.C. § 441d(a).
10. Find no reason to believe that Greg Ball violated 2 U.S.C. § 441d(a).
11. Approve the attached Factual and Legal Analysis.
12. Approve the appropriate letters.
13. Close the file.

4/16/2010
Date


Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Associate General Counsel for Enforcement


Susan L. Lebeaux
Assistant General Counsel


Delbert K. Rigsby
Attorney

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